

# FISCAL NOTE

**Bill #:** HB0057

**Title:** DEQ cost recovery for hazardous substance releases

**Primary Sponsor:** Harris, C

**Status:** As Amended in House Committee

Sponsor signature

Date

David Ewer, Budget Director

Date

## Fiscal Summary

	<b><u>FY 2006 Difference</u></b>	<b><u>FY 2007 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$0	\$0
<b>Revenue:</b>		
General Fund	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

- |   |  |
|---|--|
| <input type="checkbox"/> Significant Local Gov. Impact    | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached  | <input type="checkbox"/> Needs to be included in HB 2  |

## Fiscal Analysis:

### ASSUMPTIONS:

#### **Department of Environmental Quality (DEQ)**

1. The department will notice potentially liable persons (PLPs) at one new Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facility per year with impacts to private water supplies or air contamination.
2. An average CECRA facility with impacted water supplies or contaminated air that might trigger third party response actions is approximately 30 households, small businesses, or schools [based on six facilities to date where the potential for private response costs existed].
3. The DEQ will notify persons with private response claims by running a weekly display ad in the local newspaper for three weeks at a cost of \$208.
4. The additional workload of processing private claims generated by the requirements of HB 57 that have not previously been a part of CECRA is roughly equivalent to a 0.05 FTE.
5. DEQ will implement either interim or final actions prior to initiating a cost recovery action. Private response costs would no longer be necessary once an interim or final action is in place.
6. Up to 30 persons will respond to notices prior to a cost recovery action, claiming that they are an individual or small business, and that they have a private response cost claim, based on the department's experience at six facilities to date.

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(continued)

7. The DEQ project manager will spend 2 hours per claim (totaling 60 hours) investigating and certifying these initial claims to determine whether the claimant is a qualifying individual or small business and to ensure documentation is adequate to certify that the claimed private response costs are for a small business or individual and to ensure documentation is adequate to certify that the claimed private response costs are actual, reasonable and necessary and to assess interest.
8. No follow-up private response cost claims will be submitted.
9. No new claimants will come forward after the initial 100 are identified.
10. No rulemaking would be necessary to implement the bill with the amendments.
11. DEQ may be required to file and conduct cost recovery court actions to force the liable party to reimburse department costs relative to this obligation under HB 57. It is difficult to predict the level of effort and costs associated with such an action. The department may incur significant legal costs above those currently budgeted.
12. The total fiscal impact to DEQ is less than \$5,000 per year and would be absorbed within current staff and appropriations.

### **EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:**

A county or local government that is determined to be a PLP would be impacted.

### **TECHNICAL NOTES:**

1. Section 5(5) provides that the department may accept claims for private response costs until it files an action or issues an order to recover state remedial action costs. However, Section 4 (4) states recovery of remedial action costs occurs through civil proceedings filed in district court. Section 5(1) directs the department to include claims in any complaint or order initiated under this part. The department is not authorized to issue an order to pay state remedial action costs. Sections 5(1) and 5(5) need to be reconciled with Section 4.
2. Section 6(1) provides that the department cannot use orphan share monies to reimburse private response costs. However, Section 9(6)(d) creates a lien for orphan share monies expended for private response costs. These two sections need to be reconciled.
3. Section 6(4) provides that if less than full cost recovery is obtained, reimbursement for the state's remedial action costs and certified private response costs are apportioned in equal percentages. The meaning of this provision is unclear. The direction to "apportion in equal percentages" could mean split equally by the number of claimants or it could mean the percentage of recovery is applied individually to each claim. This bill needs to define which method of distribution is to be used.
4. A cross reference is needed in Section 6(4) to 75-10-722(4) MCA, to clarify that previously the adopted method of assessing interest under CECRA is utilized to assess interest on unpaid claims.
5. Section 8 amends 75-10-719, MCA, which allows DEQ to settle with persons who owe only a small portion of the state's remedial action costs by paying two or four times the person's reasonably projected liability. Section 8(5) and (6) would include private response costs in this settlement provision. This would be problematic in settlement negotiations for private response costs unless the defendant were willing to settle the private response cost by two or four times the reasonably projected private response costs liability.